

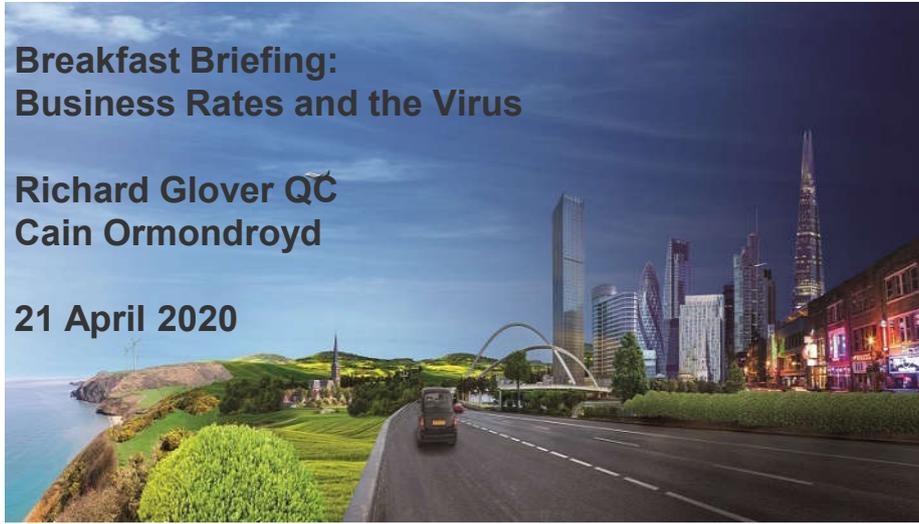


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Breakfast Briefing: Business Rates and the Virus

Richard Glover QC
Cain Ormondroyd

21 April 2020



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Parish Notices

- The Technology
- FTB on-line: the webinar programme
- FTB on-line: brunch briefings



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Today's bill of fare

- (1) The Legal Framework (RG)
- (2) Relief (RG)
- (3) Occupation (CO)
- (4) Material Change of Circumstances (RG)
- (5) The 2021 List (CO)
- (6) The Tribunal in Lockdown (CO)



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The Legal Framework- Chronology

- 21 March: Health Protection (Coronavirus, Business Closure)(England) Regulations 2020/327
- 25 March: Coronavirus Act 2020
- 26 March: Health Protection (Coronavirus, Restrictions) (England) Regulations 2020/350
- 2 April: Expanded Retail Discount Guidance
Nursery Discount Guidance
- 10 April: Tribunal Procedure (Coronavirus) (Amendment) Regulations 2020/416



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Relief - England

- No new legislation
- BA (not Govt) to grant relief – s. 47 LGFA 1988
- Reimbursement grant – s. 31 LGA 2003
- 100% discount for 2020/21
- No rateable value limit on the relief



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Relief – England: Criteria

- **Occupied** by providers on Ofsted's Early Years Register and **wholly or mainly used** for the provision of the Early Years Foundation Stage
- **Occupied** and **wholly or mainly used**
 - a. as shops, restaurants, cafes, drinking establishments, cinemas and live music venues,
 - b. for assembly and leisure; or
 - c. as hotels, guest & boarding premises and self-catering accommodation



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Relief – Wales & Scotland

Wales

- Separate guidance - very similar outcomes and issues

Scotland

- Separate and different
 - 1.6% for all
 - Airports and handling
 - Retail, hospitality & leisure



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Occupation

Options for ratepayers missing out:

- (1) Hardship relief from billing authority
- (2) Premises unoccupied and exempt for 3 months
- (3) Exemption for premises already unoccupied over 3 months



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Unoccupied premises

Some relevant principles:

- Intention to re-occupy is insufficient: *Associated Cinema Properties v Hampstead* [1944] KB 49 and 414;
- Stored items may give rise to occupation: *Southend-on-Sea Corp v White* (1900) 65 JP 7



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Unoccupied premises

Statutory disregard

- LGFA 1988, s65(5)
- Disregard plant, machinery or equipment—
 - (a) used in or on hereditament when last in use, or
 - (b) intended for use in or on hereditament.
- Apply 'but for' test: *Sheafbank v Sheffield* [1988] RA 33
- Scope – includes furniture? (ibid., p41-42)



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Exemption for unoccupied premises

- (c) owner prohibited by law from occupying/allowing open;
- (d) kept vacant by reason of action taken by or on behalf of the Crown or any local or public authority with a view to prohibiting the occupation of the hereditament

Occupation not prohibited where an alternative use is allowed: *Hailbury Investments Ltd v Westminster* [1986] 1 WLR 1232



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Exemption for unoccupied premises

- Provisions sufficiently stringent to prohibit occupation directly or by necessary implication
- Query whether relief applicable given
 - Potential for alternative uses
 - Specific exemptions (e.g. for broadcasting from closed theatres; use of hotels for homeless accommodation)



MCC

- Policy against rolling revaluation
- Only paragraph 2(7) matters not at AVD
- Some arbitrary results unavoidable
- Valuation implications ...



Paragraph 2(7)

- (a) matters affecting the physical state or physical enjoyment of the hereditament,
- (b) [its] mode or category of occupation ...
- (d) matters affecting the physical state of the locality ... or which, though not affecting the physical state of the locality, are nonetheless physically manifest there, and
- (e) the use or occupation of other premises ... in the locality ...





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Covid Candidates

- Premises closed or uses restricted
- Closure of neighbours
- Restriction of movement
- Transport schedules
- Airports and ancillary hereditaments



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2021 List

- 2021 list AVD 1.4.19
- Para 2(7) matters as at compilation date, others at AVD
- Therefore no impact on 2021 list value *unless* MCC established



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The Tribunal in Lockdown

- VTE hearings until 30.6.20 postponed
- No indication what will happen afterwards
- No amendment to VTE (Procedure) Regs 2009
- VTE required to avoid delay and seek flexibility: reg 3
- No definition of 'hearing' and no specific power to conduct hearing remotely
- Query whether existing powers allow holding of a 'public' hearing by video conferencing

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The Tribunal in Lockdown

- Amendments to Tribunals Courts and Enforcement Act 2007 s29ZA allow broadcast of video proceedings
- Amendments to Tribunal Procedure (UT)(LC) Rules 2010 expands scope for private hearings and recording
- General pilot [practice direction](#) for six months from Mar
- UT [guidance](#)
- UT is clearly 'lockdown ready' with expectation that cases (save for highly complex ones) will proceed

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The Tribunal in Lockdown

Some tips for remote hearings:

- Preparation – check technology
- Bundling and document control
- Consider multiple screens and a separate keyboard
- Establish a second means of communication for the team
- Brevity is a virtue

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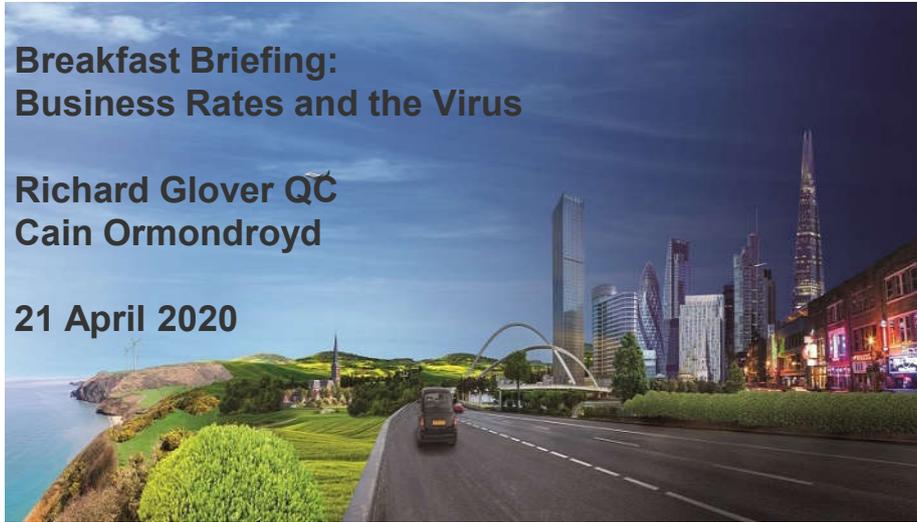


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